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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Jack D. Lemmon

Examiner: Bruce Edward Snow

Serial No.: 10/688,718

Group Art Unit: 3738

Filed: October 17, 2003

Docket: M190.143.101 (P-10664.00)

Due Date: February 28, 2005

Title: PROSTHETIC HEART VALVE SIZER ASSEMBLY WITH FLEXIBLE SIZER BODY

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

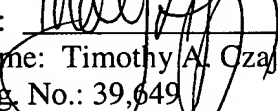
Sir/Madam:

We are transmitting herewith the attached:

- ☒ Transmittal Sheet containing Certificate of Mailing (1 pg.); and
- ☒ Response to Restriction Requirement (3 pgs.).
- ☒ Return Postcard.

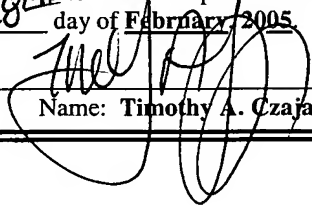
Please consider this a PETITION FOR EXTENSION OF TIME for a sufficient number of months to enter these papers, if appropriate. At any time during the pendency of this application, please charge any additional fees or credit overpayment to Deposit Account No. 500471.

Customer No. 025281

By: 
Name: Timothy A. Czaja
Reg. No.: 39,649

CERTIFICATE UNDER 37 C.F.R. 1.8:

The undersigned hereby certifies that this paper or papers, as described herein, are being deposited in the United States Postal Service, as first class mail, in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA, 22313-1450 on this 28th day of February, 2005.

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RESPONSE TO RESTRICTION AND SPECIES ELECTION REQUIREMENTS

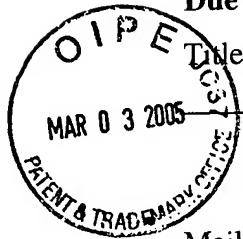
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Sir/Madam:

This is responsive to the Restriction and Species Election Requirements mailed January 28, 2005. In that Action, the Examiner stated that the present application contains claims directed to the patentably distinct inventions of Group I (claims 1-31) and Group II (claims 32-37). In response, Applicant elects the claims of Group I (claims 1-31) with traverse. In particular, Applicant respectfully requests that the Restriction Requirement be withdrawn for the following reasons.

Claim 1 relates to a flexible sizer body for evaluating a valve annulus to determine a size of a prosthetic heart valve to be sewn to the valve annulus. The preamble of claim 1 further recites certain characteristics of the prosthetic heart valve, and the body of claim 1 correlates an annular wall portion of the flexible sizer body with the described characteristics of the prosthetic heart valve. Thus, the invention of claim 1 implicitly correlates the claimed flexible sizer body with a replacement prosthetic heart valve, and thus will require the Examiner to perform prior art searches commensurate with that required by the method set forth in independent claim 32. Because no undue burden is required of the Examiner, it is respectfully requested that the Restriction Requirement be withdrawn and all claims be examined, subject to the species election described below.

In addition to the Restriction Requirement, the Examiner has asserted that the application contains claims directed to patentably distinct species, set forth in the Office Action as Species 1-



Response to Restriction Requirement and Species Election Requirement

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8. As a point of clarification, the Examiner has alleged that the drawings associated with FIGS. 5, 6A, and 6B are separate species (identified by the Examiner as Species 4, 5, and 6, respectively). However, FIG. 6B is simply an enlarged view of the sizer body 72 portion of the sizer 70 of FIG. 5. Further, the sizer body 72 is representative of a mechanical heart valve 74 as otherwise illustrated in FIG. 6A. (See, for example, page 16, lines 22-28). Thus, it is respectfully submitted that FIGS. 5, 6A, and 6B are not separate species. Further, the Examiner has alleged that the drawings associated with FIGS. 8 and 2B (identified by the Examiner as Species 8 and 1, respectively), are separate species. FIG. 8 is a sizer assembly 110 that includes the sizer body 14 of FIG. 2B. Thus, it is respectfully submitted that Species 8 includes FIGS. 8 and 2B.

With the above in mind, Applicant hereby elects Species 8, otherwise including the sizer 110 of FIG. 8 that includes the sizer body 14 of FIG. 2B that otherwise correlates with the prosthetic heart valve 30 of FIG. 2A. Commensurate with this Election, Applicant asserts that claims 1, 2, 8-13, 15-21, 25, 26, 30, and 32-37 are all generic, and that in addition to these claims, claims 3-6, 27, and 28 read upon the elected species. Thus, consonant with the election of Species 8, Applicant lists claims 1-6, 8-13, 15-22, 24-28, 30, and 32-37 as readable upon the elected species.

Having thus addressed the Restriction Requirement and Species Election Requirement imposed by the Examiner, examination of the listed claims is respectfully requested.

CONCLUSION

No fees are required under 37 C.F.R. 1.16(b)(c). However, if such fees are required, the Patent Office is hereby authorized to charge Deposit Account No. 50-0471.

The Examiner is invited to contact the Applicant's Representative at the below-listed telephone number if there are any questions regarding this response.

Any inquiry regarding this Election Response should be directed Timothy A. Czaja at Telephone No. (612) 573-2004, Facsimile No. (612) 573-2005. In addition, all correspondence should continue to be directed to the following address:

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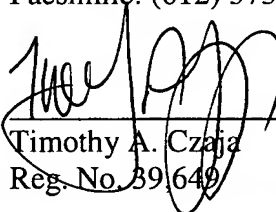
Respectfully submitted,

Jack D. Lemmon,

By his attorneys,

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Date: FEBRUARY 28, 2005
TAC:jmc



Timothy A. Czaja
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CERTIFICATE UNDER 37 C.F.R. 1.8:

The undersigned hereby certifies that this paper or papers, as described herein, are being deposited in the United States Postal Service, as first class mail, in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA, 22313-1450 on this 28th day of February, 2005.

By



Name: Timothy A. Czaja